

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14183 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -

3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge? -

NAVINCHANDRA S KAPADIA

Versus

STATE OF GUJARAT

Appearance:

MR NM KAPADIA for Petitioner
MR CC BHALJA, AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 16/09/98

ORAL JUDGEMENT

By means of this writ petition the petitioner has sought for a direction to create the post of Sr. Clerk with effect from the date on which the respondent no. 3 Shri Yogendrabhai Vyas has been promoted and to promote the petitioner from the said date on the post of Sr. clerk and to pay all the consequential benefits from retrospective effect on the basis of "equal pay for equal

work" and also for giving a direction to the respondent no. 2 to publish seniority list of Jr. Clerk inter-se in the office of the Inspecting Officer (Court - fees), Guajrat State since 1970 and to pay all the arrears of salary with all consequential benefits to the petitioner with interest at the rate of 18% p.a. and also to direct the respondent no. 2 to give promotion to the petitioner continuing the post of Sr. Clerk.

2. The petitioner was appointed as a Jr. Clerk-cum-Typist in the year 1967. Since then he was working as such though other respondents no. 3 and 4 have been promoted superceding the petitioner. The petitioner also pointed out from the Inspection Report of the office of the Inspecting Officer (Court fees) Surat made by I/c. Chief Inspecting Officer (Court - fee), Ahmedabad. clear that Jr. Clerk-cum-Typist was attached to the office in the year 1963 at the initial stage at that time there were 4 courts in the District Court, Surat. At that time, there were 22 courts at the Head Quarter, Surat. The Office of Inspecting Officer (Court fees) Baroda has been given the post of Sr. clerk over and above one post of Jr. Clerk-cum-Typist in the year 1980. The person who was working as a Jr. Clerk-cum-Typist in the office since more than 15 years was not given any promotion though all the work and duties are being performed efficiently by the Jr. Clerk-cum-Typist of this establishment which are being performed as a Sr. Clerk in the other offices of the Inspecting Officer (Court - fees). He has also requested that the prospects of promotion to the Clerk-cum-Typist should be provided by creating one post of Sr. Clerk in the said establishment for smooth and efficient running of the establishment as well as in the interest of State revenue.

3. Special Civil Application No. 4344/92 was filed by the petitioner and that was withdrawn by the petitioner on 3rd August, 1993 by the order to the effect that learned counsel for the respondents submitted that the respondents were prepared to consider the petition as a representation of the petitioner and would decide upon such representation within six weeks from that day. Learned counsel for the petitioner submitted that in view of that statement, the petitioner sought permission to withdraw that petition. Permission was granted. Accordingly, that petition was dismissed as withdrawn.

4. Pursuant to the aforesaid order, I/c. Chief Inspecting Officer (Court - fee), Ahmedabad passed the order dated 30th August, 1993. The aforesaid petition

was filed the petitioner for creating post of Sr. Clerk. Accordingly, for the purpose of promoting him to the post of Sr. Clerk, it was resolved by the Resolution mentioned in reference no. 4 by the Legal Department that the post of Clerk-cum-Typist at the office of the Inspecting Officer (Court - fees), Surat was upgraded as the post of Sr. Clerk having salary base of Rs. 1200-2040 and the petitioner was promoted to the upgraded post of Sr. Clerk (pay scale of Rs. 1200-2040) from the date he resumes the charge.

5. Learned counsel for the petitioner submitted that the petitioner has also claimed seniority amongst other Jr. Clerk-cum-Typist. That point has not been considered by the I/c. Inspecting Officer (Court fees). He being at Sr. no. 2. But he was superceded by the respondents no. 3 and 4. The unique prayer of the petitioner for creation of post of Sr. Clerk with effect from the date of promotion of the respondent no. 3 could not be granted by this Court. It is question of fact which cannot be determined by this Court as to which person is senior and which person is junior and that is to be determined by the appropriate authority or by the Tribunal. It is also admitted by the learned advocate for the petitioner that the petitioner has been granted pay-scale of Sr. Clerk and he is getting the same pursuant to the order dated 30-8-1993.

6. As the seniority of the petitioner cannot be looked into by this Court, this Court is unable to record any finding to that effect. However, the petitioner is at liberty to move the appropriate authority by filing a representation in respect of his grievances engraved. In case such representation is made by the petitioner before the respondent no.1 - Secretary to the Government of Gujarat, Legal Department, 2nd Floor, Block No. 4, New Sachivalaya, Gandhinagar. within a two weeks along with a certified copy of this order, the respondent no. 1 is directed to consider and decide the representation of the petitioner in accordance with law by a reasoned order within a period of two months thereafter. In case, the representation is rejected by the respondeat no. 1 a copy of the order will be sent to the petitioner by registered post A.D. within a week thereafter.

7. With these observations, this petition is disposed of. Rule is discharged, with no order as to costs.